

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

REGIONS ASSET COMPANY, REGIONS
FINANCIAL CORPORATION and
REGIONS BANK

Plaintiffs,

V.

REGIONS UNIVERSITY, INC.

Defendant.

Civil Action No. 2:06-cv-882-MHT

List of Facts and Statements Not Contested by Defendant

1. Regions is the largest corporation headquartered in Alabama, the largest financial institution in Alabama, and the number 1 share of market in numerous states. (Askew Decl. ¶ 5; Marmer Decl. Ex. B.)
2. Dr. Turner has admitted Regions' prominence. (Turner Tr. 136.)
3. Regions uses its mark for all its businesses and on all of its stationery, business cards, signage, advertisements, TV and radio commercials, billboards, checks, etc. (Peters Tr. 112-18.)
4. Regions is the largest corporation headquartered in Alabama. (Marmer Decl. Ex. B.)
5. Regions has the 7th largest branch network in the US; 25 branches in Montgomery and 250 branches in Alabama. (Askew Decl. ¶ 3.)
6. In 2006, Regions provided more than \$1.5 billion in loans to low- to moderate- income borrowers and in low- to moderate-income census tracts. (Jackson Decl. ¶ 4.)
7. In 2006, Regions originated \$6.9 billion in CRA small business loans; \$1.5 billion of this amount was to businesses located in low/moderate income areas. (Jackson Decl. ¶ 4.)
8. The U.S. Small Business Administration consistently ranks Regions as one of the top small business-friendly financial service providers in the country. (Jackson Decl. ¶ 4.)
9. Regions has a commitment of investing at least \$100 billion from 2007 through 2013 to support community development, small business lending and mortgage lending for low and moderate income communities and borrowers. (Jackson Decl. ¶ 5.)

10. Regions is the signature sponsor of the Montgomery Ballet's season opening, the Montgomery Symphony and the Regions Art Show; Regions also is a major sponsor of the Heart Walk, Arthritis Walk, Breast Cancer Awareness Walk, and the United Way campaign. (Dunman Tr. 101.)
11. Regions is directly involved in education through lectures and talks on financial matters of interest to its customers and the community. These include seminars for first home buyers, investment management, how to open a checking account, maintain your credit rating or how to do the right things to receive bank services. At the Opportunities Industrialization Counsel, job training programs in Montgomery, Regions has been involved periodically in programs that explain how to manage a checking account. Regions associates give talks and lectures about financial services in schools and universities like AUM, Auburn University, Alabama State University, and Huntington College. (Dunman Tr. 112-18.) Such services are provided throughout Regions' footprint. (Jackson Decl. ¶ 2.)
12. Many corporations use "university" for their corporate training programs. "Corporate university" is a generic term. (Marmer Supp. Decl. Ex. D; Pollard Tr. 83; Ex. 4.)
13. Regions has offered its REGIONS UNIVERSITY corporate training services since the merger with Union Planters in 2004. (Pollard Tr. 9-10.)
14. The Regions University program is used as part of Regions' recruitment efforts. (Pollard Tr. 34, 36; Exs. 9, 11.)
15. 25,000 Regions employees in 2005 took Regions University courses for more than 750,000 hours. (Pollard Tr. 78-79; Ex. 4 at RAC 31078-31081.)
16. Regions spent more than \$24 million on corporate training in 2006 and 2006 and is ranked in Training Magazine. (Pollard Tr. Ex. 14.)
17. Regions chose its name because it did not have a geographic connotation. (Askew Tr. 12-13.)
18. Regions has widely promoted and advertised its name since first adopted it in 1993. (*See, e.g.,* Peters Decl. Ex. A.)
19. Regions advertisements are in print, internet, television, radio, outdoor, merchandising, billboards, cinema, signs and ATMs. (Peters Tr. 112-13.)
20. Creative briefs show Regions marketing as deliberately inclusive of all customers. (Peters Decl. Ex. C; Abernethy Rep. 15.)
21. Regions is a sponsor the SEC and Sunbelt Conference and the individual schools that comprise these conferences. Regions also sponsors other universities such as Indiana University, Purdue University and Florida State University. (Peters Decl. ¶ 6, Peters Decl. Exs. A, D and E.)

22. Regions sponsors the Regions Charity Classic golf tournament, the Regions Morgan Keegan tennis tournament and other professional sports. Peters Decl. ¶ 7, Peters Decl. Exs. A and D. Regions has named the Birmingham Barons stadium REGIONS PARK. (Peters Tr. 126-27; Exs. 86-87.)
23. Regions provides scholarships to universities. (Marmer Decl. Ex. H; Exs. 50, 51.)
24. Regions spent more than \$50 million per year in 2005 and 2006 advertising its mark. (Peters Decl. Ex. B.)
25. Dr. Turner testified, "Everybody knows who Regions Bank is." (Turner Tr. 166.)
26. Regions has many REGIONS registrations at the USPTO and is incontestable by virtue of 15 U.S.C. § 1065. (See Marmer Decl. Ex. A.)
27. The Regions brand is one of plaintiffs' most valuable assets. (Askew Decl. ¶ 2.)
28. Defendant depends on tuition from business and other non-theological schools in its university. (Turner Tr. 58-59.)
29. Defendant's admission standards are low. (Abernethy Rep. 21; Ex. 113.)
30. Defendant advertises 33 programs and most tuition is from professional or applied degrees. (Exs. 44, 45, 47, 69 at RU 1628-29.)
31. Defendant has no more than 730-740 students a semester, with more than 2/3 from the Old Confederacy and border states and 240 from Alabama. (Crosby Tr. 21; Ex. 17; Abernethy Tr. 22-23.)
32. Defendant spent \$1.25 million advertising in 2006-2007 school year, primarily on television, radio and billboards. (Crosby Tr. 37-29; Ex. 123.)
33. Defendant concentrates its advertising in Alabama, Tennessee, Texas and the Carolinas. (Exs. 48, 123.)
34. All media placements for defendant in the beginning of 2007 were in Alabama and Tennessee. (Costanza Tr. 96, Ex. 48.)
35. The target market for the school is an individual 25-55, young professional or a mother at home, someone who needed to finish their degree or is transferring, someone who wants to further their education, someone who already has a bachelor's. (Costanza Tr. 23.)
36. Dr. Rex Turner, Jr., makes all the decisions concerning the advertising of the school. (Turner Tr. 19; Costanza Tr. 35-36.)
37. The purpose of advertising by Defendant is to get money from tuition, not to build the image of the program. (Costanza Tr. 43; Turner Tr. 72-74; Abernethy Rep. 24.)

38. Defendant wanted to change its name to a for-profit type name. Turner Tr. 72-74; (Ex. 20 at RU 110.)
39. Defendant did not adopt the name Turner University because the Board of Regents was concerned that persons might think it was named after Ted Turner. (Ex. 22 at RU 118.)
40. Rex Turner chose the REGIONS name. (Turner Tr. 111.)
41. Dr. Turner requested that Mr. Shlesinger give him an opinion on the registrability of Turner University, Rex University and Regions University. (Turner Tr. 132.)
42. Dr. Turner told Mr. Shlesinger that "there is a Regions bank here." (Turner Tr. 137.)
43. Dr. Turner did not provide Mr. Shlesinger other information about Regions. (Turner Tr. 136-37.)
44. Dr. Turner received an e-mail opinion from Mr. Shlesinger regarding the registrability of the marks Turner University, Rex University and Regions University. (Ex. 28.)
45. Mr. Shlesinger's email did not discuss the REGIONS mark or Regions Bank or contain an opinion regarding risk of objection for infringement or dilution arising from Regions or anyone else. (Ex. 28.)
46. Mr. Shlesinger's email did not refer to any uses of any mark. It only referred to registered marks at the USPTO. (Ex. 28.)
47. Mr. Shlesinger's email did not refer to any mark containing the word "Regions" as the distinctive element. (Ex. 28.)
48. The letter that Mr. Shlesinger prepared but did not send to defendant refers to only one "Regions" mark, plaintiffs' REGIONS CHARITY CLASSIC that is registered in class 41. (Ex. 501.)
49. Rex Turner is well acquainted with Regions' name. He has banked there since 1974, admits to knowing the name since Regions changed it, regularly sees Regions signs in Montgomery, and that the 2 tallest buildings in Montgomery bear the REGIONS name. Remembers stories about the recent merger. (Turner Tr. 8-11, 136.)
50. In its resolution to change the name of defendant to Regions University, the Board of Regents stated that the purpose was to "increase the school's attractiveness to potential students" and to "assist the University in projecting itself as a nationally recognized school of prominence." (Ex. 31.)
51. On July 31, 2006, Dr. Turner announced the approval of the name change to Regions University. At the meeting, a team member said, "I think there's a Regions University within the bank." (Turner Tr. 165-67.)

52. Dr. White, team member and school consultant, contacted Mr. Earle of Mr. Schlesinger's firm. Mr. Earle advised him that this would not pose a registration issue. (Turner Tr. 168.)
53. Dr. Turner officially changed the name of the university to Regions University on August 2, 2006. (Turner Tr. 170-71.)
54. An official announcement of the name change was sent on August 8, 2006 to students. (Ex. 34.)
55. The next day, defendant received two emails. On August 9, 2006, Dr. Wilson Luquire wrote, "Good luck with Regions. Is this related to the Bank and if so may I applaud you with double congratulations!!!!!" Ex. 35. On the same date, Mr. David Moore wrote, "John White just informed me that SCU is now Regions University. I didn't ask about the possible conflict with the bank of the same name!" (Ex. 35.)
56. August 18, 2006, plaintiffs sent defendant a cease and desist letter. (Turner Tr. 190-91.)
57. On August 31, a former student wrote to defendant, "Why was 'Regions' chosen? Did Regions Bank make a donation?" (Ex. 35.)
58. Phone call to Regions University on an unrecalled date asking about degree programs and whether Regions University is affiliated with Regions Bank. (Fulghum Tr. 17-18.)
59. Phone call to Regions University on an undisclosed date asking about degree programs and whether Regions University is affiliated with Regions Bank. (Hughes Tr. 20.)
60. Phone call on or around March or April, 2007, to Regions' call center asking if Regions is affiliated with Regions University and where Regions University is located. (Wilson Affidavit.)
61. Phone call within the last three months, to Regions' call center asking if Regions University was affiliated with Regions Bank. (Burton Affidavit.)
62. In June 2007, Mr. Brian Warwick, an attorney at the law firm of Maynard Cooper & Gale LLC in Birmingham, AL, saw a television advertisement for Regions University. He thought that it might be affiliated with Regions Bank. He had not been aware of other companies using Regions as its name and is acquainted with Regions as one of the largest financial institutions in Birmingham and elsewhere. He thought Regions may have started a school, much like graduate school courses offered by the United States Department of Agriculture, whose courses were advertised on the public transit in Washington, DC, when he lived there. (Warwick Decl.)
63. Mr. Jack Galassini, who banks at Regions in Montgomery and is aware of the large and respected presence of Regions in Alabama and elsewhere, saw a commercial for Regions University and thought that it might have "some type of relationship with Regions Bank." He was informed by Mr. Dunman at a social event that there is no affiliation. (Galassini Affidavit.)

64. Ms. Terry Boyd, the Branch Manager of Regions Bank Moores Mill Road Office in Auburn, AL, and her husband saw an advertisement for Regions University. Her husband asked if there was a connection between the university and the bank. She was not sure and learned from bank management that there was no connection. Furthermore, two of her employees asked her if there was a connection between Regions University and Regions Bank. (Boyd Affidavit.)
65. Mr. David Green, Assistant Branch Manager of Regions Bank Autauga County Office in Prattville, AL, saw a billboard for Regions University at I-85 and Taylor Road in Montgomery. He asked Denise Murphy, the Branch Manager, if it had something to do with Regions Bank. (Green Affidavit; Murphy Affidavit.)
66. Ms. Wanda Norris, an employee at Regions Bank in Enterprise, AL, and her husband saw a television advertisement for Regions University. They both wondered if it was affiliated with Regions Bank. She later had a conversation with her manager, Robbin Thompson, who indicated to her that he had also seen the ad, and told her that there was no affiliation. (Norris Affidavit; Thompson Affidavit.)
67. Mr. Kiel Odom, Branch Manager of the Regions Bank Village West Office, was approached by a teller, Mattie Sanders, who had seen an advertisement for Regions University and indicated to him that she thought Regions Bank had "bought a university." He explained to her that bank management informed him that there was no affiliation. (Odom Affidavit.)
68. Ms. Karan Rudolph, the Human Resources Assistant of Regions Financial Corporation in Montgomery, AL, saw a billboard at I-85 and Taylor Road and thought there may be some connection between Regions University and Regions Bank. She "Googled" the web to satisfy her curiosity and learned what Regions University is and that there is no connection. (Rudolph Affidavit; Sanders Affidavit.)
69. Mr. Craig Smith, Branch Manager of Regions Bank in Wetumpka, AL, heard radio advertisements and saw television advertisements for Regions University. He thought Regions University may be related with Regions Bank, but later learned from bank management that it was not. Several of his employees have told him that customers have inquired about the name Regions University and have specifically asked whether or not Regions University is affiliated with Regions Bank. He has instructed personnel in his branch to answer these customers by telling them that there is no connection. (Smith Affidavit.)
70. Ms. Sheila Noblitt, author of the blog entitled Alabama Kitchen Sink posted a conversation about public and private institutions in Alabama with the following discussion:

Sheila: "I started to throw in the privates in town, Faulkner, Huntingdon, South University and I believe, Regions University (which used to be Southern Christian). I don't know if I left anyone out. I think that's it...."

Jay Croft: "Regions University? Regions is a bank!"

Sheila: "Jay, Regions is a bank and that's why I was puzzled that Southern Christian University changed its name. I always think that the bank is behind the university. Ha."

Jay Croft: "It's like Western Maryland College in Westminster, MD. It is the only college in the USA named for a railroad. (Western Maryland Railway donated the land for the college many years ago. Westminster is not in the western part of Maryland at all.) A deep-pockets donor gave a sizeable contribution and Behold! It is McDaniel College now." (Marmer Decl. Ex. C.)

71. Persons have mentioned to Dr. Turner that defendant must have gotten some money from Regions. (Turner Tr. 179-80.)
72. Defendant did not start advertising its Regions University name until 2007, (Turner Tr. 225) and its signs still say Southern Christian University. (Costanza Tr. 91-92.)
73. Defendant does not know if any of the third party uses listed in defendant's brief has advertised on TV or radio and there is no evidence of billboard, newspaper or magazine ads.
74. Before defendant's name change, only plaintiffs' Regions names were listed in the Montgomery phone book. (Ex. 29.)
75. Other telephone books list plaintiffs' Regions names and almost no other Regions name. (Marmer Supp. Decl. Ex. A.)

Respectfully submitted this the 31st day of August, 2007.

/s/ William G. Pecau

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and service will be perfected upon any CM/ECF participants electronically and by overnight mail service a copy of the foregoing document to all participating and non-CM/ECF participants this the 31st day of August, 2007:

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